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7           UNITED STATES DISTRICT COURT  
8           WESTERN DISTRICT OF WASHINGTON  
9           AT SEATTLE

10           LOCALS 302 AND 612 OF THE  
11           INTERNATIONAL UNION OF  
12           OPERATING ENGINEERS  
13           CONSTRUCTION INDUSTRY  
14           HEALTH AND SECURITY FUND, et  
15           al.,

16                 Plaintiffs,

17                 v.

18           DELOS SANTOS CONSTRUCTION,  
19           INC.,

20                 Defendant.

21           CASE NO. C10-1396JLR

22           ORDER VACATING ORDER TO  
23           COMPEL AUDIT AND  
24           DENYING MOTION FOR  
25           ORDER TO SHOW CAUSE

26           This matter comes before the court on Plaintiffs' motion for an order to show  
27 cause (Dkt. # 14). Plaintiffs request that the court enter an order directing Nani Fischer,  
28 Defendant DeLos Santos Construction, Inc.'s ("DeLos Santos") secretary, to show cause  
29 why she should not be held in contempt of court for failure to comply with the court's  
30 October 13, 2010 Order to Compel Audit (Dkt. # 12).

1 On August 30, 2010, Plaintiffs filed this action seeking, in part, an audit of DeLos  
2 Santos's payroll records in order to determine whether DeLos Santos had reported and  
3 paid all employee benefit contributions due under certain collective bargaining  
4 agreements. (Compl. (Dkt. # 1) at 4-5.<sup>1</sup>) On September 8, 2010, Plaintiffs served DeLos  
5 Santos with the summons and complaint. (Dkt. # 4.) DeLos Santos failed to answer the  
6 complaint or otherwise defend the action. On October 1, 2010, following Plaintiffs'  
7 motion, the clerk entered default against DeLos Santos pursuant to Rule 55(a) of the  
8 Federal Rules of Civil Procedure. (Dkt. # 7.)

9 On October 11, 2010, Plaintiffs filed a motion to compel an audit of DeLos  
10 Santos's payroll records. (Dkt. # 8.) Plaintiffs argued that the audit was authorized under  
11 the trust agreements governing the employee benefit trust funds and the Operating  
12 Engineers Compliance Agreement signed by DeLos Santos. (*Id.*; *see* Reid Decl. (Dkt. #  
13 11) Exs. A-C (trust agreements), D (Operating Engineers Compliance Agreement).) The  
14 court granted Plaintiffs' motion and entered an order directing DeLos Santos to make  
15 nine categories of documents available to Plaintiffs within 15 days. (Order to Compel  
16 Audit.)

17 On October 28, 2010, Plaintiffs served the Order to Compel Audit upon Ms.  
18 Fischer "as designee for" DeLos Santos. (Dkt. # 13.) DeLos Santos, however, did not  
19 provide the documents Plaintiffs sought. On November 17, 2010, Plaintiffs filed the

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21 <sup>1</sup> Plaintiffs also seek judgment against DeLos Santos for all contributions determined  
22 under the audit to be due to the Plaintiffs, in addition to liquidated damages and interest as set  
forth in the trust agreements, attorney's fees, and auditing expenses. (*Id.* at 5.)

1 instant motion for an order to show cause why Ms. Fischer should not be held in  
2 contempt for failure to comply with the court's Order to Compel Audit.

3 Having further reviewed the record and the relevant case law, the court  
4 VACATES its Order to Compel Audit (Dkt. # 12). The Ninth Circuit has recently held  
5 that, for purposes of discovery, "a defaulted defendant should be treated as a non-party."  
6 *Jules Jordan Video, Inc. v. 144942 Canada Inc.*, 617 F.3d 1146, 1158-59 (9th Cir. 2010).  
7 A person not a party to an action may be compelled to produce documents only by a  
8 subpoena issued from the court for the district in which the production is to be made.  
9 Fed. R. Civ. P. 34(c), 45. Because the court has vacated its Order to Compel Audit, the  
10 court DENIES Plaintiffs' motion for an order to show cause (Dkt. # 14) as MOOT.

11 Dated this 2nd day of December, 2010.

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14 JAMES L. ROBART  
United States District Judge  
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